

HOUSE BILL NO. 571

INTRODUCED BY K. GALVIN-HALCRO, DOHERTY

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF AGRICULTURE TO ADOPT RULES ESTABLISHING STANDARDS FOR CERTAIN FACILITIES ~~BUILT OR IMPROVED AFTER THE EFFECTIVE DATE OF THIS ACT~~ USED FOR PESTICIDE STORAGE, ~~PESTICIDE~~ MIXING, OR LOADING SITES, AND FOR BULK PESTICIDE FACILITIES ~~OWNED OR OPERATED BY A GOVERNMENT ENTITY~~; AMENDING SECTIONS 80-8-105, 80-8-120, 80-8-201, AND 80-15-217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 80-8-105, MCA, is amended to read:

"80-8-105. Rules. (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, suspension or cancellation of registration, application, use or restricting use, prohibiting use, and offering or exposing for sale of any pesticide;

(b) determining whether pesticides are highly toxic to humans;

(c) determining standards of coloring or discoloring for pesticides and subjecting pesticides to the requirements of 80-8-202;

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations ~~which~~ that must be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration ~~which~~ that would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) revoking licenses and permits;

(l) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) registering pesticide-fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

(n) establishing registration procedures for devices, with a fee not to exceed \$5 ~~per~~ for each type of device, specifying classes of devices to be registered and providing for additional requirements;

(o) imposing conditions for renewal of ~~dealer,~~ applicator, ~~and operator,~~ and dealer licenses and permits, including requalification training;

(p) establishing procedures for implementing and administering the civil penalties under 80-8-306;

(q) establishing fees for training courses and materials;

(r) establishing standards and procedures for administering a waste pesticide and pesticide container collection, disposal, and recycling program;

(s) establishing special fees on waste pesticides or pesticide containers collected under the waste pesticide and pesticide container collection, disposal, and recycling program. These fees may be based upon volume, type, classification, or other characteristics of a pesticide or a pesticide container and may include a credit for pesticide applicator, ~~dealer, or operator,~~ or dealer license or permit fees.

(t) establishing standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide facilities.

(3) (a) The EXCEPT AS PROVIDED IN SUBSECTION (3)(B), THE department shall adopt rules establishing standards for facilities built or improved after [the effective date of this act] ANY FACILITY THAT IS USED for

~~pesticide storage, pesticide mixing, or loading sites; and FOR ANY bulk pesticide facilities owned or operated by a government entity FACILITY.~~

(b) The rules adopted pursuant to subsection (3)(a) APPLY ONLY TO A FACILITY:

(i) OWNED OR OPERATED BY A GOVERNMENT ENTITY AND LOCATED IN A FIRST-CLASS COUNTY IN WHICH THERE IS A CITY WITH A POPULATION OF 50,000 OR MORE; AND

(ii) BUILT AFTER [THE EFFECTIVE DATE OF THIS ACT] OR IMPROVED AFTER [THE EFFECTIVE DATE OF THIS ACT] IF THE IMPROVEMENT INCREASES THE APPRAISED VALUE OF THE FACILITY BY 50% OR MORE.

(c) THE RULES must include but are not limited to:

(i) the distance of the facilities FACILITY from a residential area, a park, a school, or surface water-
The distance may not be less than 1,500 feet;

(ii) THE POPULATION DENSITY AROUND THE FACILITY; AND

(iii) THE MAXIMUM QUANTITY OF PESTICIDE HELD AT THE FACILITY AT ANY ONE TIME.

~~(3)(4)~~ (a) Consistent with the provisions of Title 80, chapter 15, whenever the department finds that rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and must encompass all reasonable factors that the department considers necessary to prevent damage or injury to:

(i) persons, animals, crops, or pollinating insects from the effect of drift or careless application;

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

(b) In issuing the rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

~~(4)(5)~~ If the department finds that an emergency exists ~~which~~ that requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is effective for the period prescribed by the Montana Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing

1 under 80-8-106 must be held within the above period to determine whether the order or rule should be
2 adopted by the department.

3 ~~(5)~~(6) All rules and orders issued by the department must be made in writing and must be available
4 at the department for public inspection. Except for orders establishing or changing rules of practice and
5 procedure, all orders made and published by the department must include and be based upon written
6 findings of fact. A copy of any rule or order certified by the department must be received in evidence in
7 all courts of this state with the same effect as the original. (Subsections (2)(r) and (2)(s) terminate
8 December 31, 2003--sec. 1, Ch. 362, L. 1999.)"

9

10 **Section 2.** Section 80-8-120, MCA, is amended to read:

11 **"80-8-120. Local pesticide regulation.** (1) (a) A unit of local government may adopt an ordinance
12 to require a commercial applicator, as defined in 80-8-102(6), to provide notification when applying a
13 pesticide, subject to the following provisions:

14 (i) The applicator shall post a sign or signs at the time of the pesticide application or provide
15 notification as provided for in subsection (1)(a)(v). The applicator, property owner, or property manager
16 may not remove a sign until the pesticide is dry or the reentry interval on the pesticide label has expired,
17 whichever is later.

18 (ii) A sign must be:

19 (A) at least 4 inches in height and 5 inches in width; and

20 (B) made of weather-resistant material if used for outdoor application.

21 (iii) A sign must contain:

22 (A) the words "pesticide application"; and

23 (B) the telephone number of the applicator, property owner, or property manager who can supply
24 further information about the pesticide.

25 (iv) A sign must be posted:

26 (A) at a point clearly visible from each street or road frontage of the property so that the warning
27 is conspicuous from the public right-of-way;

28 (B) for an interior application, at each public access to the treated property, with the front of the
29 sign facing the access;

30 (C) for a golf course, at a conspicuous place in the clubhouse or pro shop or at the ~~first~~ 1st and

1 ~~tenth~~ 10th tees.

2 (v) Notification for an application by a mosquito control district or a weed control district must be
3 provided in a local newspaper or on local radio or television, stating that the property will be treated and
4 providing the telephone number of an individual who can supply further information on the pesticide
5 applications. Notification under this subsection (1)(a)(v) must be made annually in the spring and
6 periodically during the pesticide application season.

7 (vi) Posting or notification is not required for the following:

8 (A) a spot treatment of an area that is less than 100 square feet;

9 (B) an applicator subject to the environmental protection agency's worker protection standards
10 as published in 40 CFR, part 156, subpart K, and 40 CFR, part 170;

11 (C) an application on land classified as agricultural land or forest land for taxation purposes;

12 (D) an application on an irrigation conveyance facility or land or on an irrigation ditch easement
13 or right-of-way;

14 (E) an application of a pesticide that is a minimum risk pesticide as published by the environmental
15 protection agency in 40 CFR 152.25(g)(1) or a sanitizer, a disinfectant, or a microbial registered with the
16 environmental protection agency;

17 (F) an application on a railroad facility or right-of-way;

18 (G) an application on a public utility facility or right-of-way.

19 (b) A unit of local government that adopts a notification ordinance pursuant to this section shall:

20 (i) notify the department that it is adopting the ordinance on pesticide notification as provided in
21 this section and provide the department a final copy for the department's register provided for in
22 subsection (4); and

23 (ii) fund the costs, including but not limited to:

24 (A) educating its citizens of the ordinance's requirements;

25 (B) compensating personnel to enforce the ordinance; and

26 (C) prosecution of a violation of the ordinance.

27 (c) A unit of local government may not adopt a notification ordinance under this section that
28 imposes additional fee requirements on a commercial applicator.

29 (2) The department may enter into a cooperative agreement with a unit of local government for
30 the administration and enforcement of local rules adopted under 80-8-105~~(3)(a)~~(4)(a).

(3) Except as provided in subsections (1) and (2), a unit of local government may not regulate or prohibit the registration, labeling, distribution, use, or sale of pesticides or enact notification provisions more stringent than those provided for in subsections (1) and (2). It is not the intent of this subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides pursuant to Title 75, chapter 10, part 4.

(4) The department shall maintain and, upon request, distribute a register of ordinances adopted by local governing bodies pursuant to subsection (1)."

Section 3. Section 80-8-201, MCA, is amended to read:

"80-8-201. Registration. (1) Each pesticide distributed, sold, or offered for sale within the state or delivered for transportation or transported in intrastate commerce or between points within the state must be registered with the department. The registration must be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement that includes:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement is required only for information that is different from that furnished when the pesticide was registered or last reregistered.

(3) A pesticide imported into the state that is subject to and has been registered under the provisions of a federal act providing for the registration of pesticides must be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in

1 80-8-105~~(3)~~(4) and in subsection (8) of this section. The annual registration fee must also be paid, and
2 registration information required by the department must be provided.

3 (4) The applicant shall pay an annual fee of \$70 for each pesticide registered. A registration fee
4 is not required to register a federally approved experimental use permit.

5 (5) The department may require the submission of the complete formula and certified analytical
6 standards of any pesticide. If it appears to the department that the composition of the pesticide warrants
7 the proposed claims for it and if the pesticide, its labeling, and other material required to be submitted
8 comply with the requirements of 80-8-202, the department shall register the pesticide.

9 (6) If it does not appear to the department that the pesticide warrants the proposed claims for it
10 or if the pesticide, its labeling, and other material required to be submitted do not comply with this chapter,
11 the department shall notify the applicant of the manner in which the pesticide, labeling, or other material
12 required to be submitted fails to comply with the chapter to provide the applicant an opportunity to make
13 the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the
14 department may refuse to register the pesticide. The department may suspend or cancel the registration
15 of a pesticide whenever it does not appear that the pesticide or its labeling comply with this chapter or
16 whenever scientific evidence proves that the pesticide endangers humans or the general environment
17 afforded protection under 80-8-105~~(3)(a)~~(4)(a). When an application for registration is refused or the
18 department proposes to suspend or cancel a registration, the registrant may pursue administrative
19 remedies under the Montana Administrative Procedure Act and rules of the department.

20 (7) Registration is not required in the case of a pesticide shipped from one plant in the state to
21 another plant in the state by the same person.

22 (8) (a) The department, the department of public health and human services, and the department
23 of fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a
24 registration for special local needs. The applicant shall pay a one-time fee of \$70 for a special local need
25 or experimental-use permit registration. The departments shall use the same requirements and standards
26 for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as
27 amended, and regulations adopted under the act. The department shall provide the departments of public
28 health and human services and fish, wildlife, and parks with a complete copy of the application, related
29 correspondence, and a statement of the department's proposed action on the application. The department,
30 the department of public health and human services, and the department of fish, wildlife, and parks shall

1 approve or disapprove the application within 10 days after the receipt of the application. If the department,
2 the department of public health and human services, and the department of fish, wildlife, and parks are
3 in agreement with the proposed registration, the department shall issue the registration.

4 (b) The department shall establish a time and place for an interagency conference for the purposes
5 of resolving the registration of any pesticide or device. If two of the departments approve the proposed
6 registration, the department shall issue the registration.

7 (c) The registrant applying for registration must be notified as to proposed changes in registration.
8 If the departments cannot resolve the proposed registration following the interagency conference, the
9 registrant may request a joint administrative hearing before the departments of agriculture, public health
10 and human services, and fish, wildlife, and parks.

11 (d) Following the interagency conference and, if requested, the administrative hearing, if the
12 proposed registration of a pesticide or device has not been resolved, the department of agriculture shall
13 appoint an advisory council, as outlined in 80-8-108, to resolve by majority vote the registration of any
14 pesticide. The advisory council's recommendations on the registration must be accepted by the
15 departments and implemented by the department of agriculture.

16 (9) (a) Pesticides registered under any federal law when canceled for sale and use in total or in
17 part by a federal agency responsible for registration are considered canceled in total or in part for sale and
18 use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law
19 and rules or orders of the federal agency. Except as provided in subsection (9)(b), if the federal cancellation
20 allows existing stock to be used past the final date of cancellation, the sale or use in this state may not
21 exceed 2 years. The department shall provide technical assistance to any person in possession of the
22 products to ensure their proper disposal, relabeling, or removal.

23 (b) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7
24 U.S.C. 136a-1(i)(5), may be sold and used according to environmental protection agency labeling
25 requirements or other requirements for a period not to exceed 6 years from the date that distribution from
26 the registrant, manufacturer, formulator, or distributor is terminated."

27
28 **Section 4.** Section 80-15-217, MCA, is amended to read:

29 **"80-15-217. Management plans -- rulemaking -- review.** (1) The department shall adopt specific
30 agricultural chemical ground water management plans through rulemaking; however, the department may

1 implement emergency plans as set forth in 80-8-105~~(4)~~(5) or as authorized by the Montana Administrative
2 Procedure Act. Prior to rulemaking, the department shall provide to the department of environmental
3 quality a copy of each proposed specific agricultural chemical ground water management plan. A 30-day
4 period must be provided for the department of environmental quality to prepare comments on the plan.

5 (2) The department shall review agricultural chemical ground water management plans periodically
6 to determine if the requirements contained in the plans need to be modified based on new scientific data
7 and information. Plan modifications must be accomplished by rulemaking."

8

9 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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